

Members

Rep. Michael Dvorak, Chairperson  
Rep. Win Moses  
Rep. Vernon Smith  
Rep. Robert Alderman  
Rep. Ralph Ayres  
Rep. Eric Turner  
Sen. Richard Bray, Vice-Chairperson  
Sen. John Waterman  
Sen. Charles Meeks  
Sen. Anita Bowser  
Sen. William Alexa  
Sen. Cleo Washington



## INTERIM STUDY COMMITTEE ON CRIMINAL JUSTICE ISSUES

*Legislative Services Agency*  
200 West Washington Street, Suite 301  
Indianapolis, Indiana 46204-2789  
Tel: (317) 232-9588 Fax: (317) 232-2554

LSA Staff:

Timothy Tyler, Attorney for the Committee  
Mark Bucherl, Fiscal Analyst for the Committee

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### MEETING MINUTES<sup>1</sup>

Meeting Date: September 28, 1999  
Meeting Time: 10:00 A.M.  
Meeting Place: State House, 200 W. Washington  
St., Room 156-B  
Meeting City: Indianapolis, Indiana  
Meeting Number: 2

**Members Present:** Rep. Michael Dvorak, Chairperson; Rep. Win Moses; Sen. Richard Bray, Vice-Chairperson; Sen. John Waterman; Sen. Charles Meeks; Sen. Anita Bowser.

**Members Absent:** Rep. Vernon Smith; Rep. Robert Alderman; Rep. Ralph Ayres; Rep. Eric Turner; Sen. William Alexa; Sen. Cleo Washington.

Representative Michael Dvorak, Chairperson of the Interim Study Committee on Criminal Justice Issues (Committee), called the meeting to order at 10:12 a.m.

The first person to testify was Representative William Crawford. Representative Crawford discussed HB 1770, a bill he introduced during the 1999 Session of the Indiana General Assembly.

Representative Crawford stated that if HB 1770 had passed, it would have established a sentencing policy study committee to evaluate sentencing laws and policies in Indiana as

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<sup>1</sup> Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.ai.org/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

they relate to the purposes of the criminal justice and corrections systems, the availability of sentencing options, and the inmate population in Department of Correction (DOC) facilities.

Representative Crawford said he became interested in evaluating sentencing policy in Indiana while serving as a member of the House Ways and Means Committee. He said he noticed a pronounced increase in DOC operating costs caused mostly by the construction of several new DOC facilities.

Representative Crawford then distributed information concerning an Ohio plan called "RECLAIM Ohio" that had allowed Ohio to control rising juvenile justice costs while not sacrificing public safety (see Exhibit 1). Representative Crawford stated that, while the Indiana system may not need to change, it should be examined to determine if the system needs improvements.

In response to questions from Senator Charles Meeks, Representative Crawford stated the sentencing policy study committee described in HB 1770 could only make recommendations to the General Assembly concerning sentencing policy and would not have any power to implement changes on its own.

In response to questions from Senator Meeks concerning the Community Transition Program established in Public Law 273-1999, Representative Crawford stated that he understood the program shifted costs for offender housing and services from the state to the counties. He stated that, while he thought the \$7 per day per offender compensation set and paid by the DOC to reimburse counties was not adequate, he would have to talk to county officials to determine what amount of compensation would be adequate.

The next person to testify was Larry Landis, Executive Director of the Indiana Public Defender Council. Mr. Landis said the Council supported HB 1770 in 1999 and still thought a sentencing policy study was a good idea.

Mr. Landis continued by stating Indiana sentencing laws had been amended "piecemeal" over the last 20 years which had resulted in serious proportionality problems between sentences imposed for different crimes. For example, he said many sentences for violent crimes were now less than many drug sentences. He also said the war on drugs, which resulted in much harsher sentences for drug offenses, had caused prison overcrowding problems.

The next person to testify was Steve Johnson, Executive Director of the Indiana Prosecuting Attorney's Council. He said he too supported HB 1770 in 1999 for the same reasons stated by Larry Landis. However, he also said it should be determined if Indiana needs to construct more correctional facilities to address overcrowding problems.

In response to questions from Senator Meeks, Mr. Johnson stated he supported DNA testing for convicted offenders and applying the test results to old criminal cases.

Representative Win Moses then distributed a copy of a letter he sent to DOC Commissioner Edward Cohn on September 20, 1999 (see Exhibit 2). He said the letter contained thirteen questions that came up during discussions during the first Committee meeting. He then introduced Mr. Cohn and asked him to respond to the questions.

In response to the first question concerning juveniles in adult prisons, Mr. Cohn stated that on September 27, 1999, there were 72 juvenile offenders under the age of 18 committed as adults to the DOC. He said 68 of these juveniles were male and housed in several DOC

facilities around the state and four were female and housed at the Indiana Women's Prison in Indianapolis.

In response to the second question concerning separation of these juveniles from adult offenders, Mr. Cohn said the juveniles were not out of the "sight and sound" of the adults. He stated a juvenile was classified and placed in a facility based on the juvenile's security classification and specific needs. He stated it would cost approximately \$19,200,000 to construct a separate facility to house 160 of these juvenile offenders. He also stated it may be possible to come up with lower cost alternatives.

In response to questions from Senator Meeks, Mr. Cohn said that when classifying a juvenile, the nature of the juvenile's offense, the juvenile's physical and psychological demeanor, and any special programs the juvenile may need access to are all taken into consideration. However, Mr. Cohn stated that public safety was always the most important factor in the classification process. He added that inmates can be reevaluated and reclassified after entering the DOC system.

In response to the third question in the letter concerning education programs, Mr. Cohn stated he felt the DOC was meeting the education needs of juvenile offenders. He said each DOC facility had its own education programs but each facility did not offer every DOC education program available. He added literacy, Adult Basic Education, and General Educational Development programs were the most important DOC education programs.

In response to questions from Senator Meeks, Mr. Cohn said the DOC education programs were not mandatory. He said the DOC preferred that juvenile offenders enter some education program, but forcing someone into a program that he or she did not want to be in could be disruptive to other students.

In response to the fourth question in the letter concerning developmental treatment programs, Mr. Cohn said every DOC facility has psychological and psychiatric staff available. He said inmates are evaluated when entering DOC facilities to determine any medical, social service, or psychological treatment the inmate may need.

In response to the fifth question concerning special education programs, Mr. Cohn said the DOC does provide these programs. He said when offenders enter the DOC system, they are given a screening test to determine if they qualify for a special education program.

In response to the sixth question concerning mental status examinations, Mr. Cohn said a DSM IV diagnosis or assessment is conducted on every juvenile offender prior to placement in a DOC facility.

In response to the seventh question concerning mandatory substance abuse or mental health services for juvenile inmates, Mr. Cohn said these services are provided if they are needed or requested. He added that the need for these services exceeds the number of DOC staff available to provide them. He said priority is given to those inmates who have the least amount of time left to serve in a DOC facility.

In response to the eighth question concerning transition programs, Mr. Cohn stated these programs are in effect but he would like to see more. He said there was a greater need for post-incarceration assistance.

In response to questions from Senator Meeks, Mr. Cohn said he did not know what the average age of juvenile offenders was at the time they are released. He also said that, while some juveniles might not be psychologically prepared to enter an education program

when they first enter a DOC facility, the DOC attempts to get them into some program before they are released.

In response to the ninth question in the letter concerning the percentage of minors charged with a crime that are released on bond as opposed to the percentage that are held in detention centers prior to trial, Mr. Cohn said the DOC did not have that information. Representative Dvorak added that this decision is made at the local level by the trial court judge and the DOC would have no need to keep these statistics. Mr. Cohn then added that the DOC Jail Inspector does keep track of the number of juveniles being held in county jails that are in the process of being waived to the DOC.

In response to the tenth and eleventh questions in the letter concerning data about recidivism rates and about the number and types of crimes juveniles commit after they have been incarcerated as or with adults, Mr. Cohn said the DOC had done a survey involving about 30% of the files of juvenile offenders in DOC facilities. He said the number and types juvenile exposures to the criminal justice system, including apprehensions by law enforcement officers "[ran] the gamut." He said many younger offenders have already had numerous contacts with the juvenile and criminal justice system while many older offenders have had only one contact.

In response to the twelfth question concerning HIV treatment, Mr. Cohn said that any inmate who is known to be HIV positive is treated with all drugs approved by the federal Food and Drug Administration. He also said the DOC works with the State Department of Health to provide continuing care for HIV positive inmates after they are released by the DOC.

In response to the thirteenth question concerning pregnant juvenile offenders, Mr. Cohn stated that IC 11-10-2-2 forbids a pregnant delinquent offender from being committed to the DOC. He said adult women are placed in the Indiana Women's Prison and receive both prenatal and postnatal care. He said these women also receive child care skills classes during their incarceration.

Representative Moses and Representative Dvorak then thanked Mr. Cohn for his "comprehensive presentation." Senator Meeks then presented Mr. Cohn with a set of questions concerning juvenile offenders in county jails. Senator Meeks said he was aware that since these questions concern counties, the DOC may not have access to information to answer all of them. Mr. Cohn said the DOC would provide the Committee with any answers they could.

In response to questions from Senator John Waterman, Mr. Cohn said the DOC currently houses approximately 600 inmates in Oklahoma that they are trying to have transferred to correctional facilities in Kentucky and they house two inmates in Virginia. He said these other states receive \$45 per day per inmate under the contract they have with the DOC. He said this compared to \$35 per day per inmate that county jails receive for housing DOC inmates.

In response to questions from Senator Meeks, Mr. Cohn said the DOC did not have actual contracts with sheriffs concerning the \$35 per day per inmate payments. Mr. Cohn stated that, with regard to the Community Transition Program, to the best of his knowledge, the DOC was not responsible for an inmate after the DOC delivered the inmate to a county. He added that the DOC "didn't develop the [Community Transition Program] bill, the legislature did." He said the DOC was only implementing what the legislature had passed.

In response to questions from Representative Moses, DOC Jail Inspector Paul Downing

stated that a juvenile must be separated from adult offenders until the juvenile is waived to an adult court and convicted of a crime.

Senator Anita Bowser asked Mr. Cohn why he thought national and state crime rates were decreasing while prison populations were not. Mr. Cohn said that, in Indiana, that was probably caused by the use of determinate as opposed to indeterminate sentencing since the late 1970's, additional police officers making additional arrests, and some judges responding to the popular notion of "lock 'em up and throw away the key" when imposing sentences. He added that some inmates actually want to stay incarcerated as long as they can and will forfeit earned credit time to do so.

In response to questions from Senator Meeks, Mr. Cohn said the \$7 per day per offender compensation set and paid by the DOC to reimburse counties under the Community Transition Program was not adequate. However, he said the DOC would work with this amount for the present time and reevaluate it later.

In response to questions from Senator Meeks, Mr. Cohn said, speaking only for himself, he felt strongly that substance abuse is a disease. He said he would think that an individual with a substance abuse problem who has not committed any related crime could be incarcerated in a hospital setting. He said this would get the individual off the street but also provide them with a treatment program.

Mr. Cohn also stated that he would not oppose the creation of additional drug courts. However, he added that drug courts were another option in dealing with substance abuse problems and not a "panacea."

Representative Moses distributed two documents to the Committee, one entitled "Why Getting Tough on Kids Doesn't Always Work: The failure of waivers and direct filings to criminal court" from the Indiana Juvenile Justice Task Force (see Exhibit 3) and the other entitled "Trying Juveniles as Adults May Backfire" from PreventingCrime.Org (see Exhibit 4). Representative Moses then introduced William Glick, Executive Director of the Indiana Juvenile Justice Task Force.

Mr. Glick stated that waiving juveniles into adult court often results in unintended consequences. He said studies indicate that waiving juveniles into adult court makes juveniles more likely to commit subsequent crimes. He also said that other studies had shown juveniles who came out of the adult criminal justice system recidivate six times faster than juveniles who stayed in the juvenile justice system.

Mr. Glick said more community resources and prevention strategies were needed to address this issue. He said that Indiana needed to conduct a thorough and coordinated examination of juvenile justice issues. He also added that Indiana currently lacks a unified youth authority.

Mr. Glick continued by stating Indiana must come up with other options besides detaining juveniles in juvenile facilities or incarcerating them with adults. He said a "Third Tier" form of confinement between detention and incarceration was a viable option.

In response to questions from Senator Meeks, Mr. Glick said that juvenile judges and probation officers have a limited range of choices when dealing with chronic violent juvenile offenders. He said the Third Tier option was designed for this kind of juvenile offender. He added that the caseloads and responsibilities of probation officers should be decreased and more early intervention programs should be established.

In response to questions from Senator Waterman, Mr. Glick said the cost of home based and community based juvenile programs was approximately \$35 per day per juvenile while the cost of placing a juvenile in a detention center was approximately \$55 to \$140 per day per juvenile.

Representative Moses then introduced Professor Crystal Garcia from the Indiana University School of Public and Environmental Affairs at Indiana University-Purdue University at Indianapolis.

Professor Garcia stated that she had worked in juvenile detention facilities for 10 years. She said separating juveniles from adults was "crucial" since most juveniles will eventually be released and they shouldn't be "worse off than when they went in."

In response to questions from Senator Richard Bray, Professor Garcia said "major strides" had been made in reducing juvenile crime since 1995. She said public safety should always come first, but locking juveniles up with adults was not the only option when dealing with juvenile offenders.

Professor Garcia agreed that a Third Tier form of detention was a viable option. She added that, even if a juvenile was initially placed in a Third Tier setting, they could subsequently be moved to an adult facility at an older age if necessary.

In response to questions from Representative Moses, Professor Garcia stated that "after care" programs that are crucial to reintegrate juvenile offenders into society are underfunded. She said she was currently involved in one pilot program that provided juvenile offenders with volunteer opportunities to help them connect with their communities once they are released.

In response to questions from Senator Meeks, Professor Garcia said she did not know if prison populations had peaked and would eventually decline. She said the ways in which many criminal offenses are punished should be reexamined.

The next person to testify was Larry Landis. Mr. Landis distributed two amendments to IC 35-38-1-17 concerning sentence modifications that he discussed at the first Committee meeting (see Exhibit 5). Mr. Landis said that, under IC 35-38-1-17, a judge could not reduce or suspend a defendant's sentence if more than 365 days had passed since the defendant began serving his or her sentence unless the prosecuting attorney approved the reduction or suspension. He said this approval was usually "politically difficult" for the prosecuting attorney to give.

Mr. Landis continued by stating one of the amendments he distributed would increase the time limit from 365 days to five years and the other amendment removed the time limit completely. He stated he felt the authority to modify a sentence should always rest with the judge who initially imposed the sentence.

In response to questions from Representative Dvorak, Mr. Landis said a binding plea agreement cannot be modified. He said with open sentencing a judge has discretion to modify.

In response to questions from Senator Bray, Mr. Landis said IC 35-38-1-17 currently requires the judge to give notice to the victim of the defendant's crime when the judge reduces or suspends the defendant's sentence. He said if the recently enacted victim's rights statute did not already provide for victim notification before the judge's decision is made under IC 35-38-1-17, then that notification requirement should be added.

Representative Dvorak then stated that the next Committee meeting would take place on Tuesday, October 26, 1999. He stated that the Committee would examine various child abuse issues raised in several bills and resolutions introduced in 1999 by Senator Pat Miller and Representative Vaneta Becker. He added that, since this would probably be the final 1999 meeting of the Committee, Committee members should be prepared to discuss any findings and recommendations that should be included in the Committee's Final Report.

Representative Dvorak adjourned the meeting at 12:08 p.m.